

THE HONORABLE JOHN C. COUGHENOUR

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

LI LIU,

Plaintiff,

v.

KEEGAN KELL,

Defendant.

CASE NO. C17-0640-JCC

ORDER

This matter comes before the Court on Plaintiff's motion for a protective order (Dkt. No. 37). Having thoroughly considered the parties' briefing and the relevant record, the Court GRANTS the motion in part and DENIES the motion in part.

Defendant seeks certain financial information from Plaintiff to assist in his defense to Plaintiff's action seeking enforcement of her I-864 support obligation. (Dkt. No. 40 at 1–2.) Namely, Defendant seeks Plaintiff's Free Application for Federal Student Aid ("FAFSA") application, PayPal transaction history, bank statements, and food assistance applications. (Dkt. No. 37 at 6.) Plaintiff agrees the information is discoverable. (Dkt. No. 41 at 2.) But she believes Defendant will misuse this information. (*Id.* at 2–4.) Plaintiff sought a stipulated protective order, which Defendant refused to provide. (*Id.*) Plaintiff now moves the Court for a protective order precluding disclosure of the information described above for purposes outside of this dispute. (*See* Dkt. No. 37-2.)

1 A party or any person from whom discovery is sought may move
2 for a protective order in the court where the action is pending -- or
3 as an alternative on matters relating to a deposition, in the court for
4 the district where the deposition will be taken . . . The court may,
for good cause, issue an order to protect a party or person from
annoyance, embarrassment, oppression, or undue burden or
expense.

5 Fed. R. Civ. P. 26(c).

6 Plaintiff “has the burden of proving ‘good cause,’ which requires a showing that specific
7 prejudice or harm will result if the protective order is not granted.” *In re Roman Catholic*
8 *Archbishop of Portland in Oregon*, 661 F.3d 417, 424 (9th Cir. 2011). Plaintiff has demonstrated
9 good cause for entering the order Plaintiff seeks, but only to the extent Defendant does not have
10 a disclosure obligation for that information. *See Phillips Estates of Byrd v. Gen. Motors Corp.*,
11 307 F.3d 1206, 1211 (9th Cir. 2002) (the Court must balance “the public and private interests to
12 decide whether a protective order is necessary.”).

13 For the foregoing reasons, the Court GRANTS Plaintiff’s motion (Dkt. No. 37) in part
14 and DENIES the motion in part. The Clerk is DIRECTED to enter the protective order below.
15 The discovery period for the documents referenced in the order, *see infra* section 2, is
16 EXTENDED as necessary for Plaintiff to produce the documents, but not for any other purpose.
17 The Court DENIES Plaintiff’s request for attorney fees. (Dkt. No. 37 at 7.) The parties
18 reasonably dispute whether Plaintiff has shown good cause for a protective order. As such, an
19 award of fees would be unjust. Fed. R. Civ. P. 37(a)(5)(A)(iii).

20 //

21 //

22 //

23 //

24 //

25 //

26 //

1 1. PURPOSES AND LIMITATIONS

2 Discovery in this action is likely to involve production of confidential, proprietary, or
3 private information for which special protection may be warranted. Accordingly the Court enters
4 the following Protective Order. This Order is consistent with Local Civil Rule 26(c). It does not
5 confer blanket protection on all disclosures or responses to discovery, the protection it affords
6 from public disclosure and use extends only to the limited information or items that are entitled
7 to confidential treatment under the applicable legal principles, and it does not presumptively
8 entitle parties to file confidential information under seal.

9 2. “CONFIDENTIAL” MATERIAL

10 “Confidential” material shall include the following documents and tangible things
11 produced or otherwise exchanged: all Free Application for Federal Student Aid (FAFSA)
12 applications signed by Plaintiff; Plaintiff’s applications for food assistance; and Plaintiff’s
13 PayPal transaction history and bank statements (including those jointly held with Plaintiff’s
14 husband Adam Higley).

15 3. SCOPE

16 The protections conferred by this agreement cover not only confidential material (as
17 defined above), but also (1) any information copied or extracted from confidential material; (2)
18 all copies, excerpts, summaries, or compilations of confidential material; and (3) any testimony,
19 conversations, or presentations by parties or their counsel that might reveal confidential material.

20 However, the protections conferred by this agreement do not cover information that in the
21 public domain or that which becomes part of the public domain through trial or otherwise.

22 4. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL

23 4.1 Basic Principles. A receiving party may use confidential material that is disclosed
24 or produced by another party or by a non-party in connection with this case only for prosecuting,
25 defending, or attempting to settle this litigation. Confidential material may be disclosed only to
26 the categories of persons and under the conditions described in this agreement. Confidential

1 material must be stored and maintained by a receiving party at a location and in a secure manner
2 that ensures that access is limited to the persons authorized under this agreement.

3 4.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise
4 ordered by the Court or permitted in writing by the designating party, a receiving party may
5 disclose any confidential material only to:

6 (a) the receiving party’s counsel of record in this action, as well as employees of
7 counsel to whom it is reasonably necessary to disclose the information for this litigation;

8 (b) the officers, directors, and employees (including in house counsel) of the
9 receiving party to whom disclosure is reasonably necessary for this litigation, unless the parties
10 agree that a particular document or material produced is for Attorney’s Eyes Only and is so
11 designated;

12 (c) experts and consultants to whom disclosure is reasonably necessary for this
13 litigation and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

14 (d) the Court, court personnel, and court reporters and their staff;

15 (e) copy or imaging services retained by counsel to assist in the duplication of
16 confidential material, provided that counsel for the party retaining the copy or imaging service
17 instructs the service not to disclose any confidential material to third parties and to immediately
18 return all originals and copies of any confidential material;

19 (f) during their depositions, witnesses in the action to whom disclosure is reasonably
20 necessary and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit
21 A), unless otherwise agreed by the designating party or ordered by the Court. Pages of
22 transcribed deposition testimony or exhibits to depositions that reveal confidential material must
23 be separately bound by the court reporter and may not be disclosed to anyone except as permitted
24 under this agreement;

25 (g) the author or recipient of a document containing the information or a custodian or
26 other person who otherwise possessed or knew the information; and

1 (h) any Federal or State agency for which a party has a reporting obligation.

2 4.3 Filing Confidential Material. Before filing confidential material or discussing or
3 referencing such material in court filings, the filing party shall confer with the designating party
4 to determine whether the designating party will remove the confidential designation, whether the
5 document can be redacted, or whether a motion to seal or stipulation and proposed order is
6 warranted. Local Civil Rule 5(g) sets forth the procedures that must be followed and the
7 standards that will be applied when a party seeks permission from the Court to file material
8 under seal.

9 5. DESIGNATING PROTECTED MATERIAL

10 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each party
11 or non-party that designates information or items for protection under this agreement must take
12 care to limit any such designation to specific material that qualifies under the appropriate
13 standards. The designating party must designate for protection only those parts of material,
14 documents, items, or oral or written communications that qualify, so that other portions of the
15 material, documents, items, or communications for which protection is not warranted are not
16 swept unjustifiably within the ambit of this agreement.

17 Mass, indiscriminate, or routinized designations are prohibited. Designations that are
18 shown to be clearly unjustified or that have been made for an improper purpose (e.g., to
19 unnecessarily encumber or delay the case development process or to impose unnecessary
20 expenses and burdens on other parties) expose the designating party to sanctions.

21 If it comes to a designating party's attention that information or items that it designated
22 for protection do not qualify for protection, the designating party must promptly notify all other
23 parties that it is withdrawing the mistaken designation.

24 5.2 Manner and Timing of Designations. Except as otherwise provided in this
25 agreement, *see infra* second paragraph of section 5.2(a), or as otherwise stipulated or ordered,
26 disclosure or discovery material that qualifies for protection under this agreement must be clearly

1 so designated before or when the material is disclosed or produced.

2 (a) Information in documentary form: (e.g., paper or electronic documents and
3 deposition exhibits, but excluding transcripts of depositions or other pretrial or trial proceedings),
4 the designating party must affix the word “CONFIDENTIAL” to each page that contains
5 confidential material. If only a portion or portions of the material on a page qualifies for
6 protection, the producing party also must clearly identify the protected portion(s) (e.g., by
7 making appropriate markings in the margins).

8 (b) Testimony given in deposition or in other pretrial proceedings: the parties and any
9 participating non-parties must identify on the record, during the deposition or other pretrial
10 proceeding, all protected testimony, without prejudice to their right to so designate other
11 testimony after reviewing the transcript. Any party or non-party may, within fifteen days after
12 receiving the transcript of the deposition or other pretrial proceeding, designate portions of the
13 transcript, or exhibits thereto, as confidential. If a party or non-party desires to protect
14 confidential information at trial, the issue should be addressed during the pre-trial conference.

15 (c) Other tangible items: the producing party must affix in a prominent place on the
16 exterior of the container or containers in which the information or item is stored the word
17 “CONFIDENTIAL.” If only a portion or portions of the information or item warrant protection,
18 the producing party, to the extent practicable, shall identify the protected portion(s).

19 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
20 designate qualified information or items does not, standing alone, waive the designating party’s
21 right to secure protection under this agreement for such material. Upon timely correction of a
22 designation, the receiving party must make reasonable efforts to ensure that the material is
23 treated in accordance with the provisions of this agreement.

24 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

25 6.1 Timing of Challenges. Any party or non-party may challenge a designation of
26 confidentiality at any time. Unless a prompt challenge to a designating party’s confidentiality

1 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic
2 burdens, or a significant disruption or delay of the litigation, a party does not waive its right to
3 challenge a confidentiality designation by electing not to mount a challenge promptly after the
4 original designation is disclosed.

5 6.2 Meet and Confer. The parties must make every attempt to resolve any dispute
6 regarding confidential designations without court involvement. Any motion regarding
7 confidential designations or for a protective order must include a certification, in the motion or in
8 a declaration or affidavit, that the movant has engaged in a good faith meet and confer
9 conference with other affected parties in an effort to resolve the dispute without court action. The
10 certification must list the date, manner, and participants to the conference. A good faith effort to
11 confer requires a face-to-face meeting or a telephone conference.

12 6.3 Judicial Intervention. If the parties cannot resolve a challenge without court
13 intervention, the designating party may file and serve a motion to retain confidentiality under
14 Local Civil Rule 7 (and in compliance with Local Civil Rule 5(g), if applicable). The burden of
15 persuasion in any such motion shall be on the designating party. Frivolous challenges, and those
16 made for an improper purpose (e.g., to harass or impose unnecessary expenses and burdens on
17 other parties) may expose the challenging party to sanctions. All parties shall continue to
18 maintain the material in question as confidential until the Court rules on the challenge.

19 7. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN
20 OTHER LITIGATION

21 If a party is served with a subpoena or a court order issued in other litigation that compels
22 disclosure of any information or items designated in this action as “CONFIDENTIAL,” that
23 party must:

24 (a) promptly notify the designating party in writing and include a copy of the
25 subpoena or court order;

26 (b) promptly notify in writing the party who caused the subpoena or order to issue in

1 the other litigation that some or all of the material covered by the subpoena or order is subject to
2 this agreement. Such notification shall include a copy of this agreement; and

3 (c) cooperate with respect to all reasonable procedures sought to be pursued by the
4 designating party whose confidential material may be affected.

5 8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

6 If a receiving party learns that, by inadvertence or otherwise, it has disclosed confidential
7 material to any person or in any circumstance not authorized under this agreement, the receiving
8 party must immediately (a) notify in writing the designating party of the unauthorized
9 disclosures, (b) use its best efforts to retrieve all unauthorized copies of the protected material,
10 (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of
11 this agreement, and (d) request that such person or persons execute the "Acknowledgment and
12 Agreement to Be Bound" that is attached hereto as Exhibit A.

13 9. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE 14 PROTECTED MATERIAL

15 When a producing party gives notice to receiving parties that certain inadvertently
16 produced material is subject to a claim of privilege or other protection, the obligations of the
17 receiving parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This
18 provision is not intended to modify whatever procedure may be established in an e-discovery
19 order or agreement that provides for production without prior privilege review. The parties
20 agree to the entry of a non-waiver order under Fed. R. Evid. 502(d) as set forth herein.

21 10. NON TERMINATION AND RETURN OF DOCUMENTS

22 Within 60 days after the termination of this action, including all appeals, each receiving
23 party must return all confidential material to the producing party, including all copies, extracts
24 and summaries thereof. Alternatively, the parties may agree upon appropriate methods of
25 destruction.

26 Notwithstanding this provision, counsel are entitled to retain one archival copy of all

1 documents filed with the Court, trial, deposition, and hearing transcripts, correspondence,
2 deposition and trial exhibits, expert reports, attorney work product, and consultant and expert
3 work product, even if such materials contain confidential material.

4 The confidentiality obligations imposed by this agreement shall remain in effect until a
5 designating party agrees otherwise in writing or a court orders otherwise.

6 IT IS FURTHER ORDERED that pursuant to Federal Rule of Evidence 502(d), the
7 production of any documents in this proceeding shall not, for the purposes of this proceeding or
8 any other proceeding in any other court, constitute a waiver by the producing party of any
9 privilege applicable to those documents, including the attorney-client privilege, attorney work-
10 product protection, or any other privilege or protection recognized by law.

11 DATED this 23rd day of January 2018.

12
13
14 

15 John C. Coughenour
16 UNITED STATES DISTRICT JUDGE
17
18
19
20
21
22
23
24
25
26

EXHIBIT A

ACKNOWLEDGEMENT AND AGREEMENT TO BE BOUND

I, _____ of _____, declare under penalty of perjury that I have read in its entirety and understand the Stipulated Protective Order that was issued by the United States District Court for the Western District of Washington on _____, in the case of *Li Liu v. Keegan Kell*, No. C17-0640-JCC. I agree to comply with and to be bound by all the terms of this Protective Order and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any information or item that is subject to this Stipulated Protective Order to any person or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the Western District of Washington for the purpose of enforcing the terms of this Stipulated Protective Order, even if such enforcement proceedings occur after termination of this action.

Date: _____

City and State where sworn and signed: _____

Printed Name: _____

Signature: _____